

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

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JAMES ANDERSON,

Plaintiff,

vs

9:07-CV-1257

DOCTOR KOOL, Auburn Correctional Facility;  
LESTER WRIGHT; MS. COLLETTE, Assistant  
Medical Officer; and MICHAEL PETTIGRASS,  
Counselor, Auburn Correctional,

Defendants.  
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APPEARANCES:

OF COUNSEL;

JAMES ANDERSON

Plaintiff, Pro Se

96-A-7820

Coxsackie Correctional Facility

Box 999

Coxsackie, NY 12051

HON. ERIC T. SCHNEIDERMAN

Attorney General of the

State of New York

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Albany, New York 12224

C. HARRIS DAGUE, ESQ.

Asst. Attorney General

DAVID N. HURD

United States District Judge

**DECISION and ORDER**

Plaintiff, James Anderson, commenced this civil rights action in December 2007, pursuant to 42 U.S.C. § 1983. By Report-Recommendation dated January 24, 2011, the Honorable George H. Lowe, United States Magistrate Judge, recommended that the

defendants' motion for summary judgment (Docket No. 43) be granted in part, and denied in part. The defendants have filed objections to the report-recommendation.

Based upon a de novo review of the entire file, including the portions of the Report-Recommendation to which defendants have objected, and the recommendations of Magistrate Judge Lowe, the Report-Recommendation is accepted and adopted in all respects. See 28 U.S.C. 636(b)(1).

Accordingly, it is

ORDERED that


1. Defendants' motion for summary judgment (Docket No. 43) is GRANTED in part and DENIED in part as follows:

- a. All claims for damages against the defendants in their official capacities are DISMISSED;
- b. Defendants Kooi and Collette are GRANTED summary judgment to the extent that plaintiff's deliberate indifference claim is based on treatment for pain;
- c. Defendants Kooi and Collette are DENIED summary judgment to the extent that the amended complaint alleges deliberate indifference based on rapid weight loss and the failure to provide nutritional supplements;
- d. Defendant Wright's summary judgment motion is GRANTED, and all claims against him are DISMISSED;
- e. Defendant Pettigrass' summary judgment motion is GRANTED, and all federal claims against him are DISMISSED;
- f. Jurisdiction over plaintiff's state law claim of defamation is DECLINED and is DISMISSED without prejudice;
- g. Defendant Kooi's and Collette's motion for summary judgment on qualified immunity grounds is DENIED; and

2. The Clerk is directed to return the file to the Magistrate Judge for further scheduling and/or pretrial procedures.

IT IS SO ORDERED.

Dated: April 1, 2011  
Utica, New York.

  
United States District Judge